



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

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Julie Johnson, M.Ed.
Delaware Families for Hands & Voices
TLK Academy
22 Peoples Plaza
Newark, DE 19702

Dear Julie:

The State Council for Persons with Disabilities (SCPD) has reviewed the Deaf and Hard of Hearing (DHH) Child's Bill of Rights draft resolution which was shared with the Governor's Advisory Council for Exceptional Citizens (GACEC) at its October 20th meeting. SCPD truly appreciates the opportunity to review the draft and has the following observations.

First, the Delaware bill is only a House Concurrent Resolution. Therefore, the resolution would not create any enforceable entitlements with lasting effect. A bill of rights is generally created through a bill establishing statutory law. See, e.g., Title 16 Del.C. §§1121, 2220, 5161, and 5501 regarding nursing home residents, individuals with substance abuse issues, people with mental illness and people with developmental disabilities, respectively. Given the more substantial effect of a bill, versus a resolution, the bill generally undergoes more scrutiny and prospects for passage are more limited. For example, if the bill is viewed as creating substantive rights with some potential cost to the State, a fiscal note will be appended to the bill. Given the State's current financial situation, bills with any significant fiscal note are unlikely to pass in 2010. The "bottom line" is that bills are more difficult to pass, but it may not make sense to present legislation as a "bill of rights" as a resolution.

Second, the resolution is skewed towards segregated and non-inclusive education. The twelfth "WHEREAS" clause recites that least restrictive environment (LRE) is determined by considering the findings in the resolution. Those findings omit any mention of the value of education in integrated settings or the value of interaction with students without hearing or other disabilities. The resolution exclusively focuses on "education with language mode peers" and "language peers" (sixth and fifteenth WHEREAS clauses). Concomitantly, the resolution is rife with references to "unique" communication and nature of deafness, emphasizing exclusivity and differences rather than the role of accommodations to promote mainstream living (third, fourth, and fifth WHEREAS clauses). This is contrary to IDEA and Section 504 regulations [34 C.F.R. §§300.114 and 104.34].

Third, apart from an isolated reference to "equipment and materials" (second WHEREAS clause), there is an absence of references to assistive technology ("AT"). There is no mention of hearing aids, cochlear implants, FM transmitters, or other compensatory and remedial devices. Indeed,

the fourteenth WHEREAS clause defines the term "communication mode or language mode" to exclusively cover ASL, signed English, and cued or oral/aural speech based training. There is no mention of the choice to use AT to facilitate expressive and receptive language communication. When combined with the fifteenth WHEREAS clause, Par. 7), the resolution implicitly disfavors use of AT. In contrast, the IDEA regulations require public schools to ensure the proper functioning of hearing aids and surgically implanted medical devices [34 C.F.R. 300.113]. Contrast also the Texas Deaf Children's Bill of Rights cited on the NAD website which recites in pertinent part as follows:

Students who are hard of hearing may choose to use spoken and written English, including speech reading or lip reading, together with amplification instruments, such as hearing aids, cochlear implants, or assistive listening systems, to communicate with the hearing population. Students who are deaf or hard of hearing may choose to use a combination of oral or manual-visual language systems, including cued speech, manual signed systems, and American Sign Language, or may rely exclusively on the oral-aural language of their choice. Students who are deaf or hard of hearing also may use other technologies to enhance language learning.

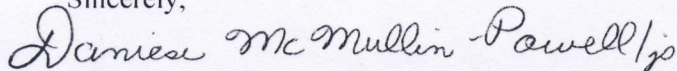
[emphasis supplied]

Fourth, some of the recitals are apparently overbroad as applied to students using AT. For example, the sixth WHEREAS clause recites that it is "essential" for D/HH children to have "an education with a sufficient number of language mode peers." Query whether it would make sense to cloister children with hearing aids together in a classroom rather than allowing them to be educated in the mainstream. It would be akin to placing all children with wheelchairs in the same classroom.

Fifth, there are some technical weaknesses in the resolution. For example, in the fifteenth WHEREAS clause, the Department of Education, not the "state board", establishes IEP requirements. In the same section, the reference to "local school system" is not meaningful. SCPD assumes the authors intend to cover "public schools". In the same section, the term "including but not limited to" is not meaningful in the context of the text and merits deletion.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the draft resolution.

Sincerely,



Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: Mr. Brian Hartman, Esq.
Council on Deaf & Hard of Hearing Equality
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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